



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 10994398

Date: OCT. 6, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a footwear designer, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will sustain the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate

international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner was a footwear designer for [redacted] from 2004 to 2007 and [redacted] from 2007 to 2016, and has been a senior footwear designer for [redacted] since 2016.¹ At the time of filing, the Petitioner worked on [redacted] product line.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have met four criteria, summarized below:

- (iii), Published material about the alien in professional or major media;
- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner met only the evidentiary criteria numbered (viii) and (ix). On appeal, the Petitioner asserts that he also meets the other two claimed evidentiary criteria.

After reviewing all of the evidence in the record, we conclude that the Petitioner has met all four claimed criteria. We agree with the Director's determinations regarding criteria (viii) and (ix), and we explain, below, why the Petitioner has also satisfied criteria (iii) and (v).

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

¹ Both [redacted] and [redacted] use [redacted] trade names.

The Director determined that three of four submitted articles are about the Petitioner, relating to his work in the field, but that the Petitioner had not shown that the articles appeared in publications that meet the regulatory requirements.

The strongest evidence under this criterion relates to [] a periodical aimed at sneaker enthusiasts. The Petitioner's evidence establishes that [] has a very substantial international following, to the point that other publications have covered its success.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

Letters in the record describe the Petitioner's participation in various projects. The Director gave limited weight to the submitted letters, because their authors have all worked with the Petitioner in various capacities. Therefore, their familiarity with the Petitioner and his work is not indicative of wider recognition in the field. The Petitioner has, however, corroborated key assertions in those letters.

For example, the senior vice president of Global Design for [] states that the Petitioner developed a [] which "delivers hugely superior levels of [] and natural foot movement." The official indicates that the Petitioner's work has had "significant and widespread influence." Other materials in the record show that other brands have begun introducing shoes with [], provoking comparisons to the Petitioner's [] design. In this way, the record shows both that the Petitioner's work has influenced other shoe designers, and that the Petitioner's design is the recognized reference point for the competing imitations.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.² In this matter, we determine that the Petitioner has established his eligibility by a preponderance of the evidence.

The record as a whole supports a finding of eligibility. The Director acknowledged the Petitioner's leading or critical role for organizations or establishments with a distinguished reputation, performing in key design roles for [] and [], both major footwear brands. The Petitioner has worked at

² *See also* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 4* (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda> (stating that adjudicators should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

the highest levels of major brand initiatives, some of which maintained steady sales even when the industry as a whole endured a significant decline. The Petitioner and his designs have attracted significant attention in publications devoted to fashion, or to footwear specifically, and the record documents how the Petitioner's work for [] has influenced competitors' designs to a greater degree than the Director acknowledged in the denial notice.

III. CONCLUSION

The Petitioner has established that he meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x). He has also demonstrated sustained national or international acclaim in his field and submitted extensive documentation of his achievements. Lastly, the Petitioner has shown that he intends to continue working in the United States in his area of expertise and that his entry will substantially benefit prospectively the United States. He therefore qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.